U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11271265

Date: AUG. 10, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner is not qualified for classification as a member of the professions holding an advanced degree, and that he did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. On appeal, the Petitioner asserts that the Director erred in denying the petition.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, *a petitioner must first demonstrate qualification for the underlying EB-2 visa classification* (emphasis added), as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.
Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or

> educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
>
> (B) Waiver of job offer –
>
> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that "[t]he term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. *If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree* (emphasis added).

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that *after a petitioner has established eligibility for EB-2 classification* (emphasis added), U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion,[2] grant a national interest waiver if a petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including,

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

[2] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

As noted above, the Director concluded that the Petitioner did not qualify for EB-2 classification as a member of the professions holding an advanced degree.[4] Specifically, the Director raised concerns with the submitted employment letters and ultimately concluded that they did not establish that the Petitioner had at least five years of progressive post-baccalaureate experience. However, the Petitioner's profession is dentist, orthodontist, and dental surgeon.[5] As stated above, the definition at 8 C.F.R. § 204.5(k)(2) clearly states, in pertinent part, that "[i]f a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." In other words, the regulation does not allow for a combination of education and experience if "a doctoral degree is customarily required by the specialty."

According to the "How to Become a Dentist" section of the *Occupational Outlook Handbook* (*OOH*) entry for dentists (SOC code 29-1020):[6]

---

[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[4] Although the Director did not address whether the Petitioner qualifies as an individual of exceptional ability in his decision, we briefly note that the Petitioner initially presented evidence insufficient to establish his eligibility as an individual of exceptional ability in accordance with 8 C.F.R. § 204.5(k). Later, in response to the Director's request for evidence (RFE) the Petitioner asserts "because [I meet] the Advanced Degree classification, we are not providing additional evidence to show Exceptional Ability." On appeal, the Petitioner also limits his claim to be a member of the professions holding an advanced degree.

[5] In the initial filing, the Petitioner indicates in part 6. of the petition that he will perform services as a "dentist/researcher," who will "examine, diagnose, and treat diseases, injuries, and malformations of teeth and gums." He states "[m]y career plan in the United States is to work with a health care facility to provide expert advice and treatment to patients. . . I have extensive experience working in clinics with a specialization in [o]rthodontics . . . and intend to fill a position as a [d]ental [s]urgeon."

[6] *See* Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook,* Dentist, https://www.bls.gov/ooh/healthcare/dentists.htm#tab-4 (last accessed August 10, 2021).

> Dentists must be licensed in the state in which they work. Licensure requirements vary by state, although *candidates usually must have a Doctor of Dental Surgery (DDS) or Doctor of Medicine in Dentistry/Doctor of Dental Medicine (DMD) degree from an accredited dental program and pass written and clinical exams. Dentists who practice in a specialty area must complete postdoctoral training* (emphasis added).
>
> . . . .
>
> Dentists typically need a DDS or DMD degree from a dental program that has been accredited by the Commission on Dental Accreditation (CODA). Most programs require that applicants have at least a bachelor's degree and have completed certain science courses, such as biology or chemistry. Although no specific undergraduate major is required, programs may prefer applicants who have a bachelor's degree in a science, such as biology.
>
> Applicants to dental schools usually take the Dental Admission Test (DAT). Dental schools use this test along with other factors, such as grade point average, interviews, and recommendations, to admit students into their programs.
>
> . . . .
>
> All dental specialties require dentists to complete additional training before practicing that specialty. This training is usually a 2- to 4-year residency in a CODA-accredited program related to the specialty, which often culminates in a postdoctoral certificate or master's degree. *Oral and maxillofacial surgery programs typically take 4 to 6 years and may result in candidates earning a joint Medical Doctor (M.D.) degree* (emphasis added).

The Petitioner has provided copies of his diplomas and academic transcripts which reflect that he has obtained:

- A four-year degree in dentistry from [redacted] University;
- Academic training in orthodontics culminating in a certificate of specialist in orthodontia from [redacted] University; and,
- A master's of business administrative degree (MBA) in management and market for healthcare offices and clinics.

The Petitioner presents evaluations of his foreign academic credentials, which are insufficient to establish that the Petitioner holds the foreign degree equivalent of a U.S. DDS or DMD degree.[7] For

[7] In cases involving foreign degrees, [USCIS] may favorably consider a credentials evaluation performed by an independent credentials evaluator who has provided a credible, logical and well-documented case for such an equivalency determination that is based solely on the alien's foreign degree(s). . . . Opinions rendered that are merely conclusory in nature, which do not provide a credible roadmap that would clearly lay out the basis for the opinions are not persuasive. See *Adjudicator's Field Manual* Chapter 22.2(j)(1)(C), https://www.uscis.gov/sites/default/files/document/policy-Manual-afm/afm22-external.pdf.

instance, the letter from [redacted], [redacted] at U.S. Credential Evaluations, concludes based upon the Petitioner's academics and "more than 19 years of experience, [the Petitioner] has not less than the equivalent of a Master's in Dentistry – Concentration in Orthodontics." The letter entitled "analysis and advisory evaluation of request for national interest waiver" from [redacted] of [redacted] College lists the Petitioner's post-secondary academic history, but does not indicate the equivalencies of the Petitioner's foreign education relative to program(s) of study at an accredited institution of higher learning within the United States. Lastly, the "course by course evaluation report" issued by Education Credential Evaluators states that the Petitioner has the foreign degree equivalent of four years of study in dentistry and a master's degree in orthodontics.[8]

Considering the totality of the evidence, the Petitioner has not established that he held the requisite doctoral degree for his profession at the time the petition was filed in 2018. The Petitioner must establish eligibility at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

For all of these reasons, the Petitioner has not demonstrated that at the time of filing of the petition he held the foreign equivalent degree of a DDS or DMD degree, and therefore, has not established that he is a member of the professions holding an advanced degree consistent with the regulatory definition at 8 C.F.R. § 204.5(k)(2).

B. National Interest Waiver

The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. Considering the Petitioner's remaining claims of eligibility under the *Dhanasar* analysis, we agree with the Director's ultimate conclusions. For example, we agree with the Director that the Petitioner's general articles and reports discussing the field of dentistry establish his proposed endeavor meets the substantial merit portion of the first prong. Regarding the national importance portion of the first prong, although the Petitioner's statements reflect his intention to continue working in his field in the United States, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor, treating patients in a dental surgery practice, rises to the level of national

---

It is important to understand that any educational equivalency evaluation performed by a credentials evaluator or school official is advisory in nature and that the final determination continues to rest with [USCIS]. *Id.* (*See also Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988), *Matter of Sea, Inc.* 19 I&N Dec. 817 (Comm 1988), and *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).)

[8] Further, the Petitioner appears to acknowledge that he is not qualified to work as a dentist in the United States. For example, he states in his January 2019 letter that he "intends to revalidate his dentistry degree, which will allow [me] to serve as a Dentist and Dental Surgeon." In his January 2020 letter he notes "[b]y the end of 2020 I intend to take [an English language proficiency test]. This way I will have all the necessary requirements to apply at the universities in early 2021, and I expect to obtain my graduate degree in 2024." Lastly, the Petitioner indicates in his September 2020 letter that he intends to "register in a two (2) year program at a U.S. dental school of medicine – the last phase in order to validate my license in the nation." The Petitioner does not identify any particular location within the United States where he will practice dental surgery.

importance. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Similarly, the record in this matter does not demonstrate that the Petitioner's proposed endeavor stands to sufficiently impact U.S. interests or the dental industry more broadly at a level commensurate with national importance. In addition, he has not demonstrated that his specific proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation. The record does not show that benefits to the regional or national economy resulting from the Petitioner's business would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.[9]

The second prong shifts the focus from the proposed endeavor to the Petitioner. The Petitioner asserts that his past work in a dental practice abroad and his education establish he is well positioned to advance the proposed endeavor. However, by his own admission he lacks the academic credentials required for obtaining a license to practice dentistry in the United States.[10] He also acknowledges in his January 2020 letter that he is ineligible to obtain a license to practice dentistry, noting "I have already taken Part 1 of the necessary licensing examinations within the American Dental Association: National Board of Dental Examination [NBDE]. . . with the approval of this petition, I will complete Part 2 of the examination [in order to] begin working within the dental field." In his September 2020 letter he states that completing a two-year program at a U.S. dental school of medicine" is needed to obtain a license to practice in his field in the United States.

We examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed endeavor, a record of success in similar efforts, or generation of interest among relevant parties supports a finding that he or she is well positioned to advance the proposed endeavor. *Id.* at 890. Here, the Petitioner has not demonstrated that he is well positioned to practice dentistry in the United States. The record does not reflect sufficient interest from potential customers, users, investors, or other relevant entities or individuals to demonstrate that he is well positioned to advance his dental practice, nor does the evidence show that the Petitioner's past record of running a business, business plan for future activities, and progress towards achieving his goals rise to the level of rendering him well positioned to advance the proposed endeavor. For these reasons, he has not established that he satisfies the second prong of the *Dhanasar* framework.

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Because the Petitioner has not established the national importance of his proposed endeavor and that he is well positioned to advance his endeavor as required by the first and second prongs of the *Dhanasar* framework, he is not eligible for a national interest waiver. Accordingly, discussion of the balancing factors under the third prong would serve no meaningful purpose.

---

[9] *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

[10] We incorporate our previous discussion regarding the Petitioner's lack of the requisite U.S. DDS or DMD degree or foreign equivalent degree.

III. CONCLUSION

The Petitioner has not established that he satisfies the regulatory requirements for classification as a member of the professions holding an advanced degree. Furthermore, as the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.